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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/640,553	08/13/2003	Randal Alan Stevens	7173/118	8361
38356 7590 08/21/2007 BROOKS, CAMERON & HUEBSCH, PLLC 1221 NICOLLET AVENUE, SUITE 500 MINNEAPOLIS, MN 55403			EXAMINER KUHN, ALLAN R	
			ART UNIT 1732	PAPER NUMBER
			MAIL DATE 08/21/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/640,553	Applicant(s) STEVENS, RANDAL ALAN	
	Examiner Allan Kuhns	Art Unit 1732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 8-18 and 22-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 19-21 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1.Applicant's election with traverse of Group I, claims 1-7, 19-21 and 26 in the reply filed on December 4, 2006 is acknowledged. The traversal is on the ground(s) that the requirement is optional and Applicant should not be required to incur the additional costs associated with filing multiple applications in order to obtain protection for the claimed subject matter. This is not found persuasive because it does not address the potential burden on the Office if required to search for multiple inventions in a single application.

The requirement is still deemed proper and is therefore made FINAL.

2.Claims 8-18 and 22-25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on December 4, 2006.

3.The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4.Claims 1-2, 6, 7,19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Widmer et al. (6,540,045). Widmer et al. disclose or suggest the basic claimed method including processing auditory canal dimension data that represent outside dimensions of the auditory canal (note column 14, line 53 to column 15, line 4). Because Widmer et al. note at column 4, lines 10-18 that rapid prototyping is "especially applicable to construe ear devices, or their shells", it would have been obvious to one of ordinary skill in the art to process outside auditory canal data to generate outside mold data and to create a negative hearing aid mold from the outside mold data using rapid prototyping, with the negative hearing aid mold having an inside surface which represents the outside dimensions of the auditory canal because one of

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ordinary skill in the art would have recognized that a thin shell of an ear device, if construed by Widmer et al., would effectively represent a negative mold for the hearing aid. It is submitted that such a shell of Widmer et al. would be suitable to receive a soft solid.

Widmer et al. disclose measuring outside dimensions of an impression, as in claim 2, with the disclosure of scanning at column 15, line 5, and it is submitted that the disclosure of the potential use of stereolithography at column 4, line 13 would have made it obvious to one of ordinary skill in the art to generate STL data, as in claims 6 and 7. Likewise, Widmer et al. suggest using a computer, as in claims 19 and 20, with the disclosure at column 6, lines 20-32.

5. Claims 3-5 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Widmer et al. as applied to claims 1, 2, 6, 7, 19 and 20 above, and further in view of Rubbert et al. (7,027,642). Rubbert et al., at column 50, lines 6-11, discuss optionally laser scanning an impression to generate dimensional data. Given this teaching of Rubbert et al. it would have been obvious to use a laser, as in claims 3-5 and 26, in the method of Widmer et al. in order to acquire required dimensional data.

6. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Widmer et al. (6,540,045) as applied to claims 1, 2, 6, 7, 19 and 20 above, and further in view of Jordan et al. (6,152,731). Jordan et al., at column 9, lines 28-34, disclose in the alternative the aspect of using a laser scan to acquire data directly from a body cavity. It would have been obvious to one of ordinary skill in the art to incorporate this aspect taught by Jordan et al. into the method of Widmer et al. since Jordan et al. teach that either direct or indirect (i.e., from an impression) data gathering techniques are effective, and the direct scanning technique would eliminate a need to take an impression.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allan Kuhns whose telephone number is (571) 272-1202. The examiner can normally be reached on Monday to Thursday from 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson, can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Allan R. Kuhns

ALLAN R. KUHNS
PRIMARY EXAMINER AU 1732